

**TITLE: PUBLIC INTEREST DISCLOSURE ACT
2018 COUNCIL PROCEDURE**



REFERENCE NUMBER:	Doc/21/38104
RESPONSIBLE OFFICER/ DEPARTMENT	Risk & Governance Officer
APPLICABLE LEGISLATION:	Public Interest Disclosure Act 2018 (PID Act)
MOUNT BARKER DISTRICT COUNCIL COMMUNITY PLAN 2020-2035	Leadership and Good Governance LGG Strategy 1.5 Demonstrate accountability through clear, relevant and easily accessible policies, corporate reporting and legislative compliance Governance and Leadership GL:2 Corporate Capacity and Leadership GL2.10 Ensure compliance with legislative requirements
RELATED POLICIES / CORPORATE POLICY / PROCEDURE	ICAC Public Interest Disclosure Guidelines Fraud, Corruption, Misconduct and Maladministration Prevention Policy Complaints Handling Policy and Procedure Code of Conduct for Council Members Employee Conduct Complaint Resolution Procedure Volunteer Policy
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Principal Officer - Statement of Intent

This Procedure has been prepared in accordance with the requirements of sections 12(4) and (5) of the *Public Interest Disclosure Act 2018* (PID Act).

As Chief Executive Officer of Mount Barker District Council, and designated Principal Officer for the purposes of the PID Act, I expect that the implementation and operation of the PID Act will encourage and facilitate:

- further transparency and accountability in the Council's administrative and management practices; and
- the Disclosure, in the public interest, of information about substantial risks to public health or safety, or to the environment, and about corruption, misconduct and maladministration in public administration.

This Procedure, is designed to enable that to occur, by ensuring that proper procedures are in place for the making of such Disclosures and for dealing with such Disclosures, and by providing appropriate protections for those who make such Disclosures.

I, and the other staff, officers and Council Members at Mount Barker District Council remain deeply committed to the protection of informants who make public interest Disclosures in accordance with the objectives of the PID Act, and to the genuine and efficient consideration and action in relation to information provided to the Council via a public interest Disclosure, as contemplated and demonstrated by this Procedure.

Any questions about this Procedure should be directed in the first instance to the Responsible Officer, whose details are at Part 4 of this Procedure.

Andrew Stuart
Chief Executive Officer

1. INTRODUCTION

1.1. Mount Barker District Council ("Council") is committed to:

- upholding the principles of transparency and accountability in its administrative and management practices;
- the protection of informants who make public interest Disclosures; and
- the genuine and efficient consideration and action in relation to information provided in a public interest Disclosure

and, therefore, encourages the making of appropriate Disclosures that reveal public interest information in accordance with this Procedure.

1.2. The Council is also committed to:

- referring, as necessary, appropriate Disclosures to another Relevant Authority;
- where the Disclosure relates to corruption, or serious or systemic misconduct or maladministration in public administration, reporting the Disclosure directly to the OPI in accordance with the Guidelines and the requirements of the ICAC Act;
- otherwise facilitating the investigation of appropriate Disclosures in a manner which promotes fair and objective treatment of those involved; and
- rectifying any substantiated wrongdoing to the extent practicable in all the circumstances.

1.3. This document explains the applicable procedures and processes that Council has in place for making and dealing with appropriate Disclosures of public interest information, to ensure that Council:

- properly fulfils its responsibilities under the PID Act and the ICAC Act;
- appropriately encourages and facilitates Disclosures of Public Interest Information, including environmental and health information regarding a location within the area of Council;
- provides a process by which Disclosures may be made so that they are properly investigated;
- provides appropriate protection for those who make Disclosures in accordance with the Act; and
- recognises the need to appropriately support Informants, the Responsible Officer and, as appropriate, those Public Officers affected by any appropriate Disclosure.

2. SCOPE

2.1. This Procedure applies to appropriate Disclosures of Public Interest Information that are made in accordance with the PID Act, by public officers including Council Members, Officers and Employees of the Council, Volunteers and by members of the public.

2.2. This Procedure is intended to complement the reporting framework under the ICAC Act, and designed to complement the existing communication channels within Council and to operate in conjunction with other existing policies, including the:

- Fraud, Corruption, Misconduct and Maladministration Prevention Policy;
- Employee Conduct Complaint Resolution Procedure;

- Code of Conduct for Council Members;
- Volunteer Policy and
- Complaints Handling Policy
- Internal Review of Council Decisions Policy under section 270 of the *Local Government Act 1999*.

3. DEFINITIONS

For the purposes of this Procedure the following definitions apply.

- 3.1. **Commissioner** means the person holding or acting in the office of the Independent Commissioner Against Corruption.
- 3.2. **Corruption in public administration** is defined in section 5(1) of the ICAC Act and means:
 - 3.2.1. an offence against Part 7 Division 4 (Offences relating to public officers) of the *Criminal Law Consolidation Act 1935*, which includes the following offences:
 - (i) bribery or corruption of public officers;
 - (ii) threats or reprisals against public officers;
 - (iii) abuse of public office;
 - (iv) demanding or requiring benefit on basis of public office;
 - (v) offences relating to appointment to public office; or
 - 3.2.2. an offence against the *Public Sector (Honesty and Accountability) Act 1995* or the *Public Corporations Act 1993*, or an attempt to commit such an offence; or
 - 3.2.3. an offence against the *Lobbyists Act 2015*, or an attempt to commit such an offence; or
 - 3.2.4. any other offence (including an offence against Part 5 (Offences of dishonesty) of the *Criminal Law Consolidation Act 1935*) committed by a public officer while acting in his or her capacity as a public officer or by a former public officer and related to his or her former capacity as a public officer, or by a person before becoming a public officer and related to his or her capacity as a public officer, or an attempt to commit such an offence; or
 - 3.2.5. any of the following in relation to an offence referred to in a preceding paragraph:
 - (i) aiding, abetting, counselling or procuring the commission of the offence;
 - (ii) inducing, whether by threats or promises or otherwise, the commission of the offence;
 - (iii) being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence;
 - (iv) conspiring with others to effect the commission of the offence

3.3. **Council** means Mount Barker District Council

3.4. **Detriment** includes:

- injury, harm (including psychological harm), damage (including damage to reputation) or loss;
- intimidation or harassment;
- discrimination, disadvantage or adverse treatment in relation to a person's employment; and/or
- threats of reprisal (which may be express or implied, and/or conditional or unconditional).

3.5. **Directions and Guidelines** is a reference to the Directions and Guidelines issued pursuant to section 20 of the ICAC Act and/or section 14 of the PID Act, which are available on the Commissioner's website (www.icac.sa.gov.au).

3.6. **Disclosure** means an appropriate Disclosure of public interest information made by an Informant to a Relevant Authority.

A person makes an **appropriate Disclosure of environmental and health information** if:

- (a) the person:
 - i. believes on reasonable grounds that the information is true; or
 - ii. is not in a position to form a belief on reasonable grounds about the truth of the information, but believes on reasonable grounds that the information may be true and is of sufficient significance to justify its Disclosure so that its truth may be investigated; and
- (b) the Disclosure is made to a Relevant Authority.

A person makes an **appropriate Disclosure of public administration information** if:

- (a) the person:
 - i. is a public officer; and
 - ii. reasonably suspects that the information raises a potential issue of corruption, misconduct or maladministration in public administration; and
- (b) the Disclosure is made to a Relevant Authority.

3.7. **Employee** refers to all the Council's employees, whether they are working in a full-time, part-time or casual capacity (whether that position is permanent or contractual).

3.8. **Environmental and health information** means information that raises a potential issue of a substantial risk to the environment or to the health or safety of the public generally or a significant section of the public.

3.9. **Fraud** includes an intentional dishonest act or omission done with the purpose of deceiving.

- 3.10. **ICAC Act** is the *Independent Commissioner Against Corruption Act 2012*.
- 3.11. **Independent Assessor** means the person designated by the Responsible Officer as being responsible for investigating a Disclosure made to Mount Barker District Council in accordance with clause 10 of this Procedure.
- 3.12. **Informant** means a person who makes an appropriate Disclosure of public interest information to a Relevant Authority.
- 3.13. **Maladministration in public administration** is defined in section 5(4) of the ICAC Act and
- 3.13.1. means:
 - (i) conduct of a public officer, or a practice, policy or procedure of a public authority, that results in an irregular and unauthorised use of public money or substantial mismanagement of public resources; or
 - (ii) conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and
 - 3.13.2. includes conduct resulting from impropriety, incompetence or negligence; and
 - 3.13.3. is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.
- 3.14. **Misconduct in public administration** is defined in section 5(3) of the ICAC Act and means:
- 3.14.1. contravention of a code of conduct by a public officer while acting in his or her capacity as a public officer that constitutes a ground for disciplinary action against the officer; or
 - 3.14.2. other misconduct of a public officer while acting in his or her capacity as a public officer.
- 3.15. **Office for Public Integrity (OPI)** is the office established under the *ICAC Act* that has the function to:
- 3.15.1. receive and assess complaints about public administration from members of the public;
 - 3.15.2. receive and assess reports about corruption, misconduct and maladministration in public administration from the Ombudsman, the Council and public officers;
 - 3.15.3. refer complaints and reports to inquiry agencies, public authorities and public officers in circumstances approved by the Commissioner or make recommendations as to whether and by whom complaints and reports should be investigated;

- 3.15.4. give directions or guidance to public authorities in circumstances approved by the Commissioner;
 - 3.15.5. perform other functions assigned to the Office by the Commissioner.
- 3.16. **Public administration** is defined in section 4 of the ICAC Act and, without limiting the acts that may comprise public administration, an administrative act within the meaning of the *Ombudsman Act 1972* will be taken to be carried out in the course of public administration.
- 3.17. **Public administration information** means information that raises a potential issue of corruption, misconduct or maladministration in public administration.
- 3.18. **Public interest information** means environmental and health information, or public administration information.
- 3.19. **PID Act** means the *Public Interest Disclosure Act 2018*.
- 3.20. **Principal Officer** for the purposes of the PID Act means the Chief Executive Officer of the Council.
- 3.21. **Public Officer** has the meaning given by section 4 and Schedule 1 of the ICAC Act, and includes
- a Council member; and
 - an employee or officer of the Council
- 3.22. **Relevant Authority** means the person or entity that receives an appropriate Disclosure of public interest information in accordance with the PID Act, as set out in Appendix A to this Procedure.
- 3.23. **Responsible Officer** is a person who has completed any training courses approved by the Commissioner for the purposes of the *Public Interest Disclosure Regulations 2019* and has been designated by the Council as Responsible Officer under section 12 of the PID Act.
- 3.24. **Victimisation** occurs when a person causes detriment to another on the ground, or substantially on the ground, that the other person (or a third person) has made or intends to make an appropriate Disclosure of public interest information.

4. RESPONSIBILITIES

- 4.1. The Principal Officer is responsible for:
- 4.1.1. ensuring that one or more appropriately qualified officers or employees of the Council are designated as Responsible Officers of the Council for the purposes of the PID Act and undertake any training required by the Public Interest Disclosure Regulations; and
 - 4.1.2. ensuring that the name and contact details of each Responsible Officer of the Council are made available to officers and employees of the council; and

- 4.1.3. the preparation and maintenance of this Procedure in accordance with the requirements of the PID Act and the Directions and Guidelines, in particular the Public Interest Disclosure Guidelines.
- 4.2. A person designated as a Responsible Officer for the Council:
 - 4.2.1. must:
 - 4.2.1.1. receive appropriate Disclosures relating to the Council and ensure compliance with the PID Act, and this Procedure, in relation to any such Disclosures;
 - 4.2.1.2. make appropriate recommendations to the Principal Officer of the Council in relation to dealing with Disclosures, including any suggested changes to this Procedure; and
 - 4.2.1.3. provide advice to officers and employees of the Council in relation to the administration of the PID Act; and
 - 4.2.1.4. complete any training courses approved by the Commissioner for the purposes of the Public Interest Disclosure Regulations; and
 - 4.2.2. may carry out any other functions relating to the PID Act.
- 4.3. A Council member, employee or officer of the Council is responsible for:
 - 4.3.1. ensuring they comply with this Procedure when dealing with any Disclosure; and
 - 4.3.2. immediately referring any Disclosure of environmental and health information made to them by a member of the public, or any Disclosure of public interest information made to them by a public officer, to the Responsible Officer.
- 4.4. Upon receipt of a Disclosure, the Responsible Officer will deal with the Disclosure in accordance with the processes described in this Procedure, and within the authority granted by the PID Act.
- 4.5. If an Informant believes that his/her Disclosure is not being dealt with appropriately or in accordance with this Procedure, they should contact the Responsible Officer in the first instance.
- 4.6. The Responsible Officer may be contacted in person, by telephone or in writing. The relevant contact details are:
 - Responsible Officer Sue Miller
 - Telephone 8391 7231
 - Email pid@mountbarker.sa.gov.au
 - Address Confidential

Responsible Officer, Public Interest Disclosure
PO Box 581
Mount Barker SA 5251

and if not available:

- Responsible Officer Anne Pett
 - Telephone 8393 6436
 - Address Confidential
- Responsible Officer, Public Interest Disclosure
PO Box 581
Mount Barker SA 5251

5. Confidentiality

- 5.1. The identity of an Informant will be maintained as confidential in accordance with the PID Act.
- 5.2. A recipient of an appropriate Disclosure may only divulge the identity of an Informant where:
 - 5.2.1. the recipient believes on reasonable grounds that it is necessary to divulge the identity of the Informant in order to prevent or minimise an imminent risk of serious physical injury or death to any person, **and** the identity of the Informant is then divulged to a person or authority that the recipient believes on reasonable grounds is the most appropriate authority or person to be able to take action to prevent or minimise the imminent risk of serious physical injury or death to any person;
 - 5.2.2. the recipient has been issued with a notice from the OPI advising that the identity of the Informant is required by the OPI, in which case the recipient must disclose the identity of the Informant to the OPI;
 - 5.2.3. doing so is necessary for the matter to be properly investigated (but only to the extent necessary to ensure proper investigation); or
 - 5.2.4. the Informant consents to his/her identity being disclosed
- 5.3. The PID Act does not expressly require any other information relating to a Disclosure (including, for example, the nature of the allegations) to be maintained as confidential, but in considering whether to further disclose other information provided as part of an appropriate Disclosure the Council should be mindful of the prohibition against Victimisation in the PID Act.
- 5.4. An Informant may wish to remain anonymous, but in that event must ensure that the allegation is sufficiently supported by the provision of necessary details and evidence to enable the matter to be properly investigated.

6. Disclosure Process

- 6.1. Relevantly for the purposes of this Procedure, the PID Act provides for protection for Informants where public interest Disclosures are made:
 - 6.1.1. by a member of the public or a public officer about environmental and health information which the Informant reasonably believes to be true or which the Informant believes may be true and is of sufficient significance to warrant Disclosure, regarding a location within the Council area of a particular council; and/or
 - 6.1.2. by a public officer with a reasonable suspicion about public administration information regarding either a location within a Council area or a public officer who is a member, officer or employee of the Council.
- 6.2. Disclosures should generally, and wherever possible, be directed in the first instance to the Responsible Officer, who has the responsibility for receiving appropriate Disclosures relating to the Council.
- 6.3. However, nothing in this Procedure prevents a person from making a Disclosure to another Relevant Authority, including a Relevant Authority external to the Council. This is a choice to be made by the Informant at his/her discretion.
- 6.4. The following are relevant considerations for an Informant in determining where to direct a Disclosure:
 - 6.4.1. when choosing to make a Disclosure internally, Disclosures relating to an elected member or a member of council staff, including the Chief Executive Officer (or person acting in that position), should usually be made to a Responsible Officer;
 - 6.4.2. any Disclosure relating to a person appointed as a Responsible Officer should be made to the other person appointed as a Responsible Officer or failing this, to a Relevant Authority external to the Council (such as the OPI);
 - 6.4.3. any Disclosure relating to public administration information about a public officer who is a member, officer or employee of the Council may be made to a Responsible Officer, or to the person responsible (either in fact, or as may be designated by the PID Act) for the management or supervision of the public officer the subject of the Disclosure;
 - 6.4.4. any Disclosure relating to Maladministration or Misconduct in public administration may be reported to OPI in accordance with the ICAC Act;
 - 6.4.5. if there is a reasonable suspicion of Corruption, or of Maladministration or Misconduct that is serious or systemic, it must be reported to the OPI in accordance with the Directions and Guidelines;

- 6.4.6. if a Disclosure contains allegations of Fraud or Corruption, the Informant should report the matter in accordance with the Council's Fraud, Corruption, Misconduct and Maladministration Prevention Policy, which provides that:
 - 6.4.6.1. if the Disclosure relates to Corruption in public administration it will be reported to the OPI; and
 - 6.4.6.2. if the Disclosure relates to Fraud, it may be reported to the Responsible Officer or direct to SA Police (SAPOL).
- 6.5. A Disclosure may be made in person, by telephone or in writing (either by post, email – refer clause 4 of the Procedure). Where a Disclosure is made by telephone, the recipient must take notes of the conversation and, where possible, should ask the Informant to verify and sign the notes.
- 6.6. The following steps will be taken to ensure that a Disclosure is received securely:
 - 6.6.1.1. A separate email address pid@mountbarker.sa.gov.au;
 - 6.6.1.2. Records stored separately as detailed in 13 below.

7. Receipt of a Disclosure

- 7.1. A flowchart outlining the Disclosure Process is at **Appendix B** to this Procedure.
 - 7.1.1 The Responsible Officer is available to provide advice as to what constitutes an appropriate Disclosure (as per clause 3.6 of this Procedure) having regard to who can make a public interest information Disclosure, what is public interest information and who can receive a Disclosure – refer section 5(3) and 5(4) of the PDI Act 2018.
 - 7.1.2 In the event the Disclosure does not constitute an appropriate Disclosure as per clause 3.6 of this Procedure, the person making such a disclosure will be advised that this Public Interest Disclosure Act 2018 Council Procedure does not apply and no further action will be taken, and they will be referred to Council's Complaints Handling Policy.
- 7.2. If a Council member, employee or officer receives a Disclosure of public interest information regarding a location within the Council area, the recipient of that Disclosure will:
 - 7.2.1. ask the Informant whether they consent to the details of their identity being provided to the Responsible Officer, and in doing so advise the Informant that a failure to provide that consent may mean that the Disclosure cannot be properly investigated; and
 - 7.2.2. refer the Disclosure to the Responsible Officer and, in doing so, comply with the wishes of the Informant with respect to whether details of their identity may be divulged.

- 7.3. Upon the receipt of a Disclosure (whether directly, or by referral from a Council Member, employee or officer), the Responsible Officer will:
 - 7.3.1. immediately undertake a Preliminary Assessment in accordance with Part 8 of this Procedure; and
 - 7.3.2. as soon as practicable thereafter, in accordance with Part 9 of this Procedure:
 - 7.3.2.1. notify the OPI of the Disclosure; and
 - 7.3.2.2. confirm receipt of the Disclosure with the Informant; and
 - 7.3.3. subject to the outcome of the Preliminary Assessment, then take appropriate action, including, where required:
 - 7.3.3.1. appointing an Independent Assessor to further investigate the Disclosure in accordance with Part 10 of this Procedure; and
 - 7.3.3.2. notifying the Informant of the outcome of any action, including any investigation in accordance with Part 11 of this Procedure; and
 - 7.3.3.3. notifying the OPI of the outcome of any action taken in accordance with Part 11 of this Procedure; and/or
 - 7.3.3.4. reporting the outcome of any action taken to the Minister in accordance with Part 11 of this Procedure; and
 - 7.3.3.5. preparing and issuing a final report to the Principal Officer in accordance with Part 12 of this Procedure.

8. Preliminary Assessment of Disclosure

- 8.1. Where the identity of the Informant is known to the Responsible Officer or is reasonably ascertainable, the Responsible Officer will acknowledge receipt of the Disclosure within **2 working days** and in doing so, will provide a copy of this Procedure to the Informant.
- 8.2. Upon receipt of a Disclosure, the Responsible Officer will undertake a preliminary assessment to determine:
 - 8.2.1. if the content of the Disclosure suggests there is an imminent risk of serious physical injury or death to any person or the public generally;
 - 8.2.2. if the matter/s the subject of the Disclosure involve corruption in public administration, or serious or systemic misconduct or maladministration in public administration; or
 - 8.2.3. if the information disclosed justifies further action, including a decision as to whether the Disclosure:
 - 8.2.3.1. is frivolous, vexatious or trivial (in which case, no further action will be taken in relation to the Disclosure);
 - 8.2.3.2. involves a matter which has already been investigated or acted upon by a Relevant Authority (Appendix A) and there is no reason to re-examine the matter or there is other good reason why no

- action should be taken in respect of the matter (in which case, no further action will be taken in relation to the Disclosure);
- 8.2.3.3. requires referral to another Relevant Authority (Appendix A) external to the Council; or
 - 8.2.3.4. warrants a formal investigation or referral to an Independent Assessor for a formal investigation and report to Council.
- 8.3. Where the Disclosure relates to public administration information about a public officer who is a member, officer or employee of the Council and it is made to the person responsible for the management or supervision of the public officer the subject of the Disclosure (**the Supervisor**), the Supervisor will conduct the Preliminary Assessment instead of the Responsible Officer, and will then report the outcome of his/her determination following the Preliminary Assessment to the Responsible Officer to action.
 - 8.4. The Responsible Officer must report the outcome of his/her determination following the Preliminary Assessment to the Chief Executive Officer (unless the Disclosure relates to the Chief Executive Officer). Any report prepared in accordance with this Part will not disclose particulars that will or are likely to lead to the identification of the Informant, unless the circumstances in clause 5.2 of this Procedure apply.
 - 8.5. Where the Responsible Officer (or Supervisor) determines that the content of the Disclosure suggests there is an imminent risk of serious physical injury or death to any person or to the public generally, the Responsible Officer (or Supervisor) must immediately communicate such information as may be necessary to mitigate that risk to the most appropriate agency (for example, South Australia Police, SafeWork SA, SA Ambulance, Environment Protection Authority). In doing so, the Responsible Officer or Supervisor must also have regard to clause 5.2.1 of this Procedure.
 - 8.6. Where the Responsible Officer (or Supervisor) forms a reasonable suspicion that the matter/s the subject of the Disclosure involve corruption in public administration, or serious or systemic misconduct or maladministration in public administration, the Responsible Officer (or Supervisor) must comply with his/her reporting obligations under the ICAC Act in accordance with the Directions and Guidelines.
 - 8.7. Where the Responsible Officer determines the Disclosure warrants referral to an external body or another Relevant Authority (Appendix A), the Responsible Officer will undertake the referral, including ensuring that such information as is necessary to enable action to be taken is communicated to the most appropriate person or relevant authority (Appendix A) to take that action. Where the Preliminary Assessment is being undertaken by the Supervisor, the Supervisor will include this recommendation in his/her report to the Responsible Officer for the Responsible Officer to action.
 - 8.8. Where the Responsible Officer determines the Disclosure warrants further investigation, the Responsible Officer will, having regard to available resources, may appoint an Independent Assessor and refer the Disclosure to the Independent Assessor for investigation. Where the Preliminary Assessment is being undertaken by the Supervisor, the Supervisor will include this recommendation in his/her report to the Responsible Officer for the Responsible Officer to action.

- 8.9. Where the Responsible Officer determines the Disclosure requires any other action to ensure the matter the subject of the Disclosure is properly addressed, the Responsible Officer will include in his/her determination details of that other recommended action. Where the Preliminary Assessment is being undertaken by the Supervisor, the Supervisor will include this recommendation in his/her report to the Responsible Officer for the Responsible Officer to action.

9. Notification of Preliminary Assessment

- 9.1. So long as the identity of the Informant is known to the Responsible Officer or is reasonably ascertainable, the Responsible Officer will notify the Informant of the outcome of his/her determination in writing as soon as is reasonably practicable after the Preliminary Assessment has been made, and in any event **within 30 days of receipt** of the Disclosure. In doing so, the Responsible Officer must advise the Informant of:
- 9.1.1. any action that has been, or will be, taken in relation to the Disclosure; or
- 9.1.2. if no action is being taken in relation to the Disclosure, the reason/s why.
- 9.2. If the Responsible Officer fails to notify the Informant in accordance with clause 9.1 above, the Informant may be entitled to protection in relation to any subsequent Disclosure of that information to a journalist or Member of Parliament in accordance with the PID Act.
- 9.3. If the Informant is dissatisfied with the Responsible Officer's determination, it is open to the Informant to report the Disclosure to another Relevant Authority (Appendix A) external to the Council.
- 9.4. As soon as reasonably practicable following the Preliminary Assessment and notification to the Informant, the Responsible Officer must use the dedicated online notification form at icac.sa.gov.au to notify OPI of the Disclosure (**Initial Notification**), and in doing so must ensure that the details required by Guideline 1.4 of the Public Interest Disclosure Guidelines are included in the Initial Notification.
- 9.5. The Responsible Officer will retain the unique reference number issued by the OPI upon making the Initial Notification, and will ensure that reference number is provided to any other person or authority to whom the Disclosure is referred.

10. Investigation Procedure

- 10.1. Where the Responsible Officer determines, following a Preliminary Assessment, that a Disclosure warrants referral to an Independent Assessor for a formal investigation and report to Council, the Responsible Officer may appoint an Independent Assessor in accordance with this Part to investigate the Disclosure.
- 10.2. If an Independent Assessor is determined to be required they will be appointed on a case-by-case basis depending on the nature of the Disclosure.
- 10.3. The objectives of the investigation process are:

- 10.3.1. in appropriate circumstances, to investigate the substance of the Disclosure and to determine whether there is evidence in support of the matters raised or, alternatively, to refute the report made;
 - 10.3.2. to collate information relating to the allegation as quickly as possible. This may involve taking steps to protect or preserve documents, materials and equipment;
 - 10.3.3. to consider the information collected and to draw conclusions objectively and impartially;
 - 10.3.4. to observe procedural fairness in the treatment of any person who is subject of the Disclosure; and
 - 10.3.5. to make recommendations arising from the conclusions drawn concerning remedial or other appropriate action.
- 10.4. The investigation will observe the principles of natural justice throughout the investigation process. The investigation will be conducted in an efficient manner and will involve a thorough and balanced assessment of the available evidence and any other factors deemed relevant to making a fair and reasonable judgement about the matter.
- 10.5. Upon receipt of a Disclosure referral under this Part, the person undertaking the investigation will bring the fact of the Disclosure to the attention of the person who is the subject of it in writing within **5 days**, and provide them with an opportunity to respond to the Disclosure within a reasonable timeframe (either in writing or in person). The full details of any allegations contained in the Disclosure need not be brought to the person's attention if the Independent Assessor considers that doing so will compromise the investigation.
- 10.6. During any interview with the person undertaking the investigation, the person who is the subject of a Disclosure may be accompanied by any person providing support to the person (including a lawyer) as the person considers fit. Any costs incurred in relation to obtaining the assistance of a support person are the personal expenses of the person subject of the Disclosure. The support person is bound by a duty of confidentiality in relation to any matter discussed during such interview.
- 10.7. The investigation will be undertaken in confidence. So long as the identity of the Informant is known to the Responsible Officer or is reasonably ascertainable, the identity of the Informant will remain confidential unless the circumstances in clause 5.2 of this Procedure apply.
- 10.8. The person undertaking the investigation will keep the Responsible Officer informed of the expected timeframes for completion of the investigation and the provision of his/her investigation report to the Responsible Officer.
- 10.9. Upon finalising an investigation an investigation report will be provided to the Responsible Officer that will contain the following details:
- 10.9.1. the allegation(s);
 - 10.9.2. an account of all relevant information received including any rejected evidence, and the reasons why the rejection occurred;
 - 10.9.3. the conclusions reached and the basis for them; and

- 10.9.4. any recommendations arising from the conclusions, including any remedial action which should be taken by the Council.

The report is to be accompanied by:

- 10.9.5. the transcript or other record of any verbal evidence taken, including tape recordings; and
 - 10.9.6. all documents, statements or other exhibits received by the Independent Assessor and accepted as evidence during the course of the investigation.
- 10.10. Any report prepared in accordance with this Part will not disclose particulars that will or are likely to lead to the identification of the Informant, unless the circumstances in clause 5.2 of this Procedure apply.
- 10.11. The Responsible Officer must take whatever action is, in his/her discretion, considered appropriate in the circumstances having regard to the matters identified in the Independent Assessor's report.

11. Notification of Further Action

- 11.1. So long as the identity of the Informant is known to the Responsible Officer or is reasonably ascertainable, the Responsible Officer will notify the Informant of the outcome of his/her determination in writing as soon as is reasonably practicable after the Further Action has been taken and, in any event, **within either:**
- 11.1.1. **90 days of receipt** of the Disclosure; or
 - 11.1.2. such longer period as may be specified by written notice given by the Responsible Officer within that 90 day period.
- 11.2. In doing so the Responsible Officer must advise the Informant of:
- 11.2.1. any action that has been, or will be, taken in relation to the Disclosure; or
 - 11.2.2. if no action is being taken in relation to the Disclosure, the reason/s why.
- 11.3. If the Responsible Officer fails to notify the Informant in accordance with clauses 11.1 and 11.2 above, the Informant may be entitled to protection in relation to any subsequent Disclosure of that information to a journalist or member of Parliament in accordance with the PID Act.
- 11.4. If the Informant is dissatisfied with the Responsible Officer's determination or the action taken it is open to the Informant to report the Disclosure to another Relevant Authority (Appendix A) external to the Council.
- 11.5. As soon as reasonably practicable following the Preliminary Assessment and notification to the Informant, the Responsible Officer must use the dedicated online notification form at icac.sa.gov.au to notify OPI of the action taken in relation to the Disclosure (**Further Notification**) and, in doing so, must ensure that the details

required by Guideline 2 of the Public Interest Disclosure Guidelines are included in the Further Notification.

- 11.6. If the Disclosure came to the Council by way of a referral from a Minister, the Responsible Officer must ensure that the Minister is also notified of the action taken in relation to the Disclosure, and the outcome of any such action. The Minister should be notified in accordance with this clause following the Preliminary Assessment if the Responsible Officer determines that no action is to be taken.

12. Final Report and Recommendation

- 12.1. Upon finalising any action required in relation to a Disclosure, the Responsible Officer must prepare a report that will contain the following details:
 - 12.1.1. the subject of the Disclosure;
 - 12.1.2. an account of the steps taken by the Responsible Officer in accordance with this Procedure, including, where appropriate, enclosing a copy of any Independent Assessor's report;
 - 12.1.3. conclusions reached as a result of the steps taken in response to the Disclosure and the basis for them; and
 - 12.1.4. any recommendations arising from the conclusions, including any remedial action which should be taken by the Council.
- 12.2. Any report prepared in accordance with this Part will not disclose particulars that will or are likely to lead to the identification of the Informant, unless the circumstances in clause 5.2 of this Procedure apply.
- 12.3. The Responsible Officer's Report must be provided to the Chief Executive Officer to action as he/she considers appropriate.
- 12.4. The Chief Executive Officer may, in his/her discretion, inform the elected body, on a confidential basis, about a Disclosure.

13. Secure Handling and Storage of Information

- 13.1. The Responsible Officer must ensure accurate records of an appropriate Disclosure are securely and confidentially maintained including notes of all discussions, phone calls, and interviews.
- 13.2. The Responsible Officer will ensure all information relating to an appropriate Disclosure is maintained as confidential and as such, will be solely responsible for the secure storage of this information, which will be stored in restricted containers and accessibly only to limited individuals.
- 13.3. In performing his/her duties, the Responsible Officer will maintain a confidential file of information (including written documents, disks, tapes, film or other objects that contain information) that relates to a Disclosure and/or is a product of the associated

investigation/reporting process. All such information will be recorded in a register which is to remain confidential and be securely stored with access restricted to the relevant Responsible Officer or relevant public officer.

- 13.4. In the event that a person's appointment as a Responsible Officer is terminated, the person must provide this information to the newly-appointed Responsible Officer and having done so will continue to be bound by a duty of confidentiality in respect of an Informant's identity and the information received as a result of the Disclosure.
- 13.5. Although the Responsible Officer is ultimately responsible to ensure public interest information will be securely received and stored, the security and confidentiality obligations outlined in this Part also apply to any Independent Assessor appointed pursuant to this Procedure in relation to any Investigation.

14. Protection for the Informant

- 14.1. Although the PID Act does not provide any protection to people who knowingly make Disclosures that are false or misleading in a material particular, an Informant who makes an appropriate Disclosure will ordinarily be protected by:
 - 14.1.1. immunity from criminal or civil liability;
 - 14.1.2. a prohibition on Disclosure of his/her identity, other than in limited specific circumstances;
 - 14.1.3. a prohibition against Victimisation; and
 - 14.1.4. a prohibition against hindering, obstructing or preventing an Informant from making an appropriate Disclosure.
- 14.2. A person who personally commits an act of victimisation against an Informant is guilty of an offence and may be prosecuted.
- 14.3. The Council will take action as appropriate in the circumstances of the relevant Disclosure/s to protect Informants from victimisation, and/or from being hindered or obstructed in making a Disclosure. Such action may include acting in accordance with the following risk minimisation steps:
 - 14.3.1. ensuring discussions related to the details of the Disclosure are held privately;
 - 14.3.2. ensuring electronic diary appointments are marked as private for discussions related to the Disclosure with the informant;
 - 14.3.3. as set out in the Public Interest Disclosure Procedure and/or referring the matter to the SA Police
 - 14.3.4. disciplinary action by the Council or the Chief Executive Officer (as appropriate) for any failure to act otherwise than in accordance with this Procedure (including with respect to divulging the identity of an Informant) in relation to a Disclosure.

15. Availability of the Procedure

The Procedure is available for public inspection at the Customer Service Centre, at the Local Government Centre, 6 Dutton Road, Mount Barker, South Australia and on the Council's website www.mountbarker.sa.gov.au. Copies will also be provided to the public upon request and upon payment of a fee in accordance with the Council's Schedule of Fees and Charges.

16. Review

This Procedure will be reviewed every three years or earlier in the event of changes to legislation or related Policies and Procedures or if deemed necessary by the Risk and Governance Officer.

17. Further Information

For further information on this Procedure, please contact:

Title: Risk and Governance Officer
Telephone: 8391 7231
Email: council@mountbarker.sa.gov.au

Appendix A

Relevant Authorities

Where the information relates to...	the relevant authority is...
<p>a public officer*</p> <p>*as defined and set out in Schedule 1 of the <i>Independent Commissioner Against Corruption Act 2012</i> - relevantly, this includes members, officers and employees of local government bodies</p>	<p>either:</p> <ul style="list-style-type: none"> the person who is designated by the Guidelines as being taken to be responsible for management or supervision of the public officer; or the person who is in fact responsible for the management or supervision of the public officer; or the relevant responsible officer (as designated by the Council in accordance with section 12 of the PID Act)
a public sector agency or public sector employee	<p>either:</p> <ul style="list-style-type: none"> the Commissioner for Public Sector Employment; or the responsible officer for the relevant public sector agency
an agency to which the <i>Ombudsman Act 1972</i> applies	the Ombudsman
a location within the area of a particular council established under the <i>Local Government Act 1999</i>	a member, officer or employee of that Council
a risk to the environment	the Environment Protection Authority
an irregular and unauthorised use of public money or substantial	the Auditor-General
the commission, or suspected commission, of any offence	a member of the police force
a judicial officer	the Judicial Conduct Commissioner
a member of Parliament	the Presiding Officer of the House of Parliament to which the member belongs
a person or a matter of a prescribed class ¹	an authority declared by the regulations to be a relevant authority in relation to such information

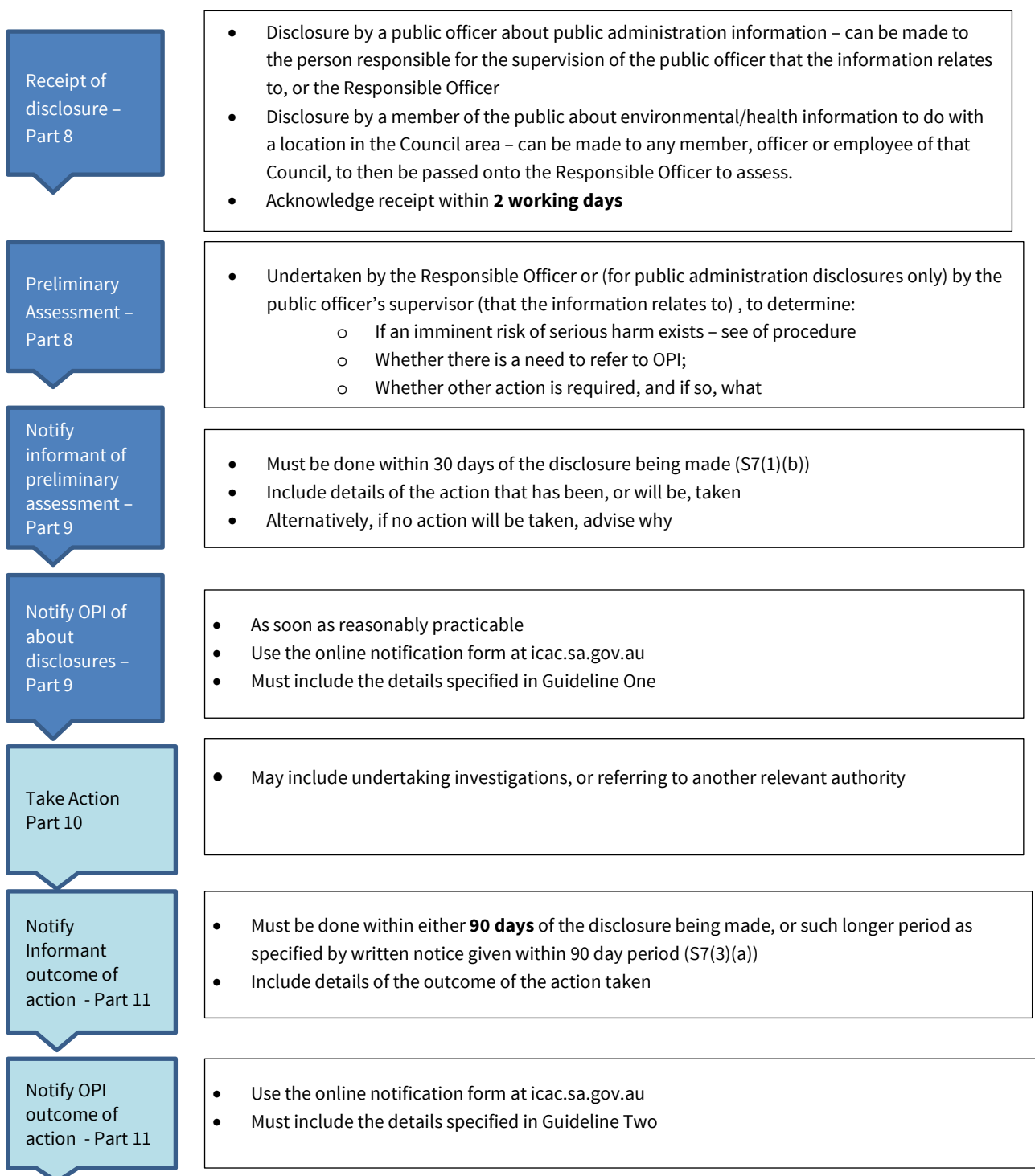
¹ presently, no prescribed persons or classes have been identified

Where the information relates to...	the relevant authority is...
<p>public interest information - being:</p> <ul style="list-style-type: none"> • environmental and health information (information that raises a potential issue of a substantial risk to the environment or to the health or safety of the public generally or a significant section of the public); or • public administration information (information that raises a potential issue of corruption, misconduct or maladministration in public administration) 	<ul style="list-style-type: none"> • the OPI; • a Minister of the Crown; or • any other prescribed person or person of a prescribed class

Appendix B

Notification Process Flowchart

The Responsible Officer is available to provide advice as to what constitutes an appropriate Disclosure (as per clause 3.6 of this Procedure) having regard to who can make a public interest information Disclosure, what is public interest information and who can receive a Disclosure – refer section 5(3) and 5(4) of the PDI Act 2018. In the event the Disclosure does not constitute an appropriate Disclosure as per clause 3.6 of this Procedure, the person making such a disclosure will be advised that this Public Interest Disclosure Act 2018 Council Procedure does not apply and no further action will be taken, and they will be referred to Council’s Complaints Handling Policy.



If applicable
notify Minister
re outcome of
action – Part
11.6

- Only applicable if the initial disclosure came from/via a Minister (S7(5)(b)(ii))